THE RECORD
OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

EDITORIAL BOARD

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Association Activities

IN THE January 25 issue of Newsweek there was published an interview with Senator McCarthy in which he criticized Telford Taylor, a member of the Association, for representing two clients. The publication of the interview by Newsweek offered an occasion for the President to reiterate the Association's position in regard to the defense of unpopular clients or causes. Mr. Webster's letter and the Association's resolution are printed below:

February 11, 1954

Editor, Newsweek
Newsweek Building
152 West 42nd Street
New York, N. Y.

Sir:

An interview with Senator McCarthy relating to Telford Taylor reported in Newsweek of January 25 suggests that I should bring to your attention a resolution of The Association of the Bar of the City of New York adopted January 20, 1953. A copy of the resolution is enclosed. Similar resolutions have been

adopted by the American Bar Association and the New York State Bar Association.

Newsweek reported Senator McCarthy as saying:

> "Taylor was a member of the Bridges defense committee. This committee's sole function was to attempt to free Harry Bridges and two others who were convicted of perjury in connection with Communist activities. Taylor worked for the reinstatement of Mary Jane Keeney and five others who were discharged from the United Nations. According to Assistant Secretary General Byron Price, they were 'a handful of ringleaders' using methods 'straight out of Marx.' Mrs. Keeney had been publicly named two years previously before a Congressional committee as being an active courier in a Communist ring."

Mr. Taylor was not a member of the Bridges Defense Committee. The record shows that he was counsel to Bridges and others before the Supreme Court of the United States on review of their convictions under the immigration and conspiracy laws. The Court sustained Mr. Taylor's argument that the prosecutions were barred by the Statute of Limitations.

The record shows also that Mr. Taylor was not retained by Mary Jane Keeney or the five others discharged by the United Nations (who were represented by other counsel); he represented the organization of UN employees known as the Staff Association before the UN Administrative Tribunal. The Tribunal sustained Mr. Taylor's argument that discharged employees, including Mrs. Keeney and the five others, were entitled to know the reasons for their discharge.

I mention these facts because I am confident that, knowing them, Newsweek will recognize the right, if not the duty, of Mr. Taylor to take the cases of Bridges and the UN Staff Association. And my hope is that on reflection Newsweek will join in our effort to reaffirm "that the right to counsel requires public acceptance of the correlative right of a lawyer to represent and

defend, in accordance with the standards of the bar, any client without having imputed to him his client's reputation, views or character."

I think it is material to your consideration of this matter that, by assignment of Chief Judge Swan, the Treasurer of this Association is engaged now in presenting the appeal for John David Provoo, a man now convicted of treason, in the Court of Appeals for the Second Circuit. Judge Medina defended in a similar case when he was at the Bar.

The appearance of lawyers for unpopular clients or in unpopular causes is demanded by the highest traditions of the profession. In the language of Erskine, spoken in 1792, in his defense of Tom Paine: "From the moment that any advocate can be permitted to say that he will or will not stand between the Crown and the subject arraigned in the Court where he daily sits to practise, from that moment the liberties of England are at an end. If the advocate refuses to defend from what he may think of the charge or of the defence, he assumes the character of the judge; nay, he assumes it before the hour of judgment, and in proportion to his rank and reputation puts the heavy influence of perhaps a mistaken opinion into the scale against the accused, in whose favour the benevolent principles of the English Law makes all presumptions, and which commands the very judge to be his counsel."

Yours, &c.

s/ BETHUEL M. WEBSTER

Resolution of The Association of the Bar of the City of New York, approved at a Stated Meeting of the Association held on January 20, 1953:

RESOLVED:

1. That The Association of the Bar of the City of New York recognizes that the right to counsel requires public acceptance of the correlative right of a lawyer to represent and defend, in accordance with the standards of the bar,

any client without having imputed to him his client's reputation, views or character.

2. That this Association will support any lawyer against criticism or attack in connection with such representation, when, in its judgment, he has acted in accordance with the standards of the bar.

3. That this Association will strive to educate the profession and the public on the rights and duties of a lawyer in representing any client, regardless of the unpopularity of either the client or his cause.

FORMER President Herbert Hoover, Chairman of the Commission on Organization of the Executive Branch of the Government, has appointed five members of the Association to the Commission's task force on legal services and procedure, and has designated George Roberts as consultant on procedure before regulatory agencies. The members of the Association on the task force are Herbert W. Clark, San Francisco; Reginald Heber Smith, Boston; James M. Landis, Judge Harold R. Medina and Presiding Justice David W. Peck. The task force studies will relate to the legal services and procedure of the Executive Branch, including various federal administrative agencies. Close co-operation with the President's Conference on Administrative Procedure is planned.

THE HONORABLE Ewen E. S. Montagu, C.B.E., Q.C., The Judge Advocate of the Fleet, spoke to the Association in January under the auspices of the Committee on Post-Admission Legal Education, Malcolm Fooshee, Acting Chairman. Mr. Montagu was the British lawyer who during World War II planned and carried out the most brilliant ruse of the war. His book, *The Man Who Never Was,* a February Book-of-the-Month Club selection, is the officially documented story of the "drowned" man who changed the course of history. For this completely successful hoax—one

that fooled Hitler and his High Command and saved American and British lives—Mr. Montagu received the Military Order of the British Empire.

THE ANNUAL Photographic Show, sponsored by the Committee on Art, John W. Thompson, Chairman, opened on Thursday, March 11. The Subcommittee in charge of the Photographic Show is Robert L. Golby, Chairman, Carl C. Manderen and Philip L. Winter.

THE COLUMBIA UNIVERSITY Bicentennial Conference for Lawyers and Judges was held at the House of the Association in January. The sessions were well attended and the President of the Association presided. Among the outstanding guests from abroad who participated in the conference were Sir Hartley Shawcross, former Attorney General of Great Britain; Justice Ivan C. Rand of the Supreme Court of Canada; Dr. Hu Shih, President in Exile of the Peking University and former Chinese Ambassador to the United States; Dr. Arthur Goodhart, Master of University College, Oxford; Professor Isidore Kisch, Director of the Netherlands Institute of Comparative Law; and Professor F. H. Lawson of Brasenose College, Oxford. Members of the Association who participated were Dean William C. Warren of the Columbia University Law School; Clifford P. Case, President of the Fund for the Republic, Inc.; and former President Whitney North Seymour. John N. Hazard, Chairman of the Association's Library Committee, was in charge of arrangements for the conference.

AS A result of disbarment proceedings brought by the Committee on Grievances, Eli Whitney Debevoise, Chairman, Roy O. Lange was disbarred by the Appellate Division of the Supreme Court, First Department. The main charge against Mr. Lange was that he advised Cuban nationals who were his clients and who were illegally in the U. S. A. that they could legalize their status in this

country by going to Canada and obtaining permanent residence visas from the American Consulate at Montreal. The court found that Lange knew at the time that he gave this advice that these aliens had illegally overstayed their temporary residence in the United States, and that they would be denied admission to Canada if their status as overstays were made known to the Canadian border authorities. In order to enable his clients to secure entrance into Canada, Lange coached them to conceal the purpose of their visit to that country, and to falsely represent that they were American citizens when questioned by the Canadian authorities. In some cases Lange personally accompanied the aliens by car or by airplane and personally represented to the Canadian officials that his clients were Americans—thus securing their admission into Canada. Lange also made a practice of supplying some of his clients with false birth certificates representing that they had been born in the United States.

THE COMMITTEE on Foreign Law, Willis L. M. Reese, Chairman, and the Committee on International Law, Dana C. Backus, Chairman, held a reception at the House of the Association in February for lawyers attached to the permanent delegations to the United Nations and for lawyers on the staff of the Secretariat.

AT ITS January meeting the Committee on Bankruptcy and Corporate Reorganizations, Edmund Burke, Jr., Chairman, voted to disapprove bills introduced by Senator William Langer which provide for the conduct of bankruptcy administration by a salaried corps of official trustees, receivers and attorneys and for the greater participation in such administration by United States Attorneys.

ALLEN T. KLOTS, a Vice President of the Association, represented the Association at hearings before the Subcommittee on Legis-

lative Procedure of the Rules Committee of the House of Representatives. The hearings dealt with the various proposals that have been made for the adoption of standards for congressional investigations.

THE COMMITTEE on Admiralty, William G. Symmers, Chairman, has recommended to the Executive Committee that the Association approve the proposed admiralty rules of procedure recommended for adoption by the Supreme Court of the United States by the Maritime Law Association and the American Bar Association.

THE FOLLOWING letter from a member of the Association indicates with what care some members are reading *Jurisprudence in Action,* the collection of legal essays sponsored by the Committee on Post-Admission Legal Education:

Dear President Webster:

Just a thought about one word in "Jurisprudence in Action," a book which I like to sip and appreciate like a fine liqueur—slowly, a little at a time.

While enjoying the reprinted speech by Dean Ames on "Law and Morals," I was stopped, at the last paragraph of page 20, by what appeared to be an error in the introductory sentence, which reads:

> "Instances of unsuccessful actions against persons free from fault readily suggest themselves." (Emphasis supplied)

From the sense of the balance of the paragraph, which gave instances of liability without fault, I concluded that Dean Ames meant to say "successful" actions.

I checked into an earlier reprint, and found that the above-quoted paragraph conformed with it. I therefore wrote to Dean Barrow of Cincinnati Law School, at whose exercises, in 1908, the speech was delivered, in an effort to track down the original. In a gracious reply, he agrees that from the context it is clear that "successful" was meant. He finds, however, that in a very old printed volume of addresses, the word is printed "unsuccessful;" and expresses the view that the error

crept into the first prints and was thus continued in the subsequent ones. Thus, the paragraph conforms to the existing copies.

In the hoped-for next edition, the word "[*sic*]" might appear after "unsuccessful," with an explanatory footnote.

Kindest regards and best wishes for the New Year.

Faithfully yours,

HAROLD ROLAND SHAPIRO

THE COMMITTEE on Labor and Social Security Legislation, David L. Benetar, Chairman, had as a guest at the January meeting Eugene W. DuFlocq, counsel to the Joint Legislative Committee on Labor, Workmen's Compensation, Social Security and related subjects. Mr. DuFlocq and the members of the committee informally exchanged views with respect to proposed state legislation in the field of labor and industrial relations.

THE EIGHTH Conference of the Inter-American Bar Association will meet in Sao Paulo from March 15 to 22. The International Bar Association's Fifth Conference will begin on July 19 at Monaco. Members who desire to become Patrons of the International Bar Association should make application to the Acting Secretary General, Gerald J. McMahon, 501 Fifth Avenue, New York 17, New York.

The Calendar of the Association for March and April

(As of February 28, 1954)

March	1	Dinner Meeting of Committee on Federal Legislation Dinner Meeting of Committee on Labor and Social Security Legislation Dinner Meeting of Committee on Medical Jurisprudence Dinner Meeting of Committee on Professional Ethics
March	2	Dinner Meeting of Committee on Bill of Rights Meeting of Committee on Broadcasting Meeting of Committee on State Legislation
March	3	Dinner Meeting of Executive Committee Meeting of Section on Wills, Trusts and Estates
March	4	Meeting of Committee on the City Court Dinner Meeting of Committee on Criminal Courts, Law and Procedure Dinner Meeting of Committee on Domestic Relations Court
March	8	Dinner Meeting of Committee on Municipal Affairs
March	9	*Stated Meeting of the Association, 8:00 P.M. Buffet Supper, 6:15 P.M.* Meeting of Subcommittee on Court Visitations of the Committee on Criminal Courts, Law and Procedure Meeting of Committee on State Legislation
March	10	Dinner Meeting of Committee on Insurance Law Meeting of Section on Labor Law
March	11	*Opening of Photographic Show, 4:30 P.M.* Meeting of Committee on Criminal Courts, Law and Procedure
March	15	Meeting of Library Committee

March	16	Dinner Meeting of Committee on Bankruptcy and Corporate Reorganizations Meeting of Committee on Post-Admission Legal Education Meeting of Committee on State Legislation
March	17	Meeting of Committee on Admissions Dinner Meeting of Committee on Foreign Law Dinner Meeting of Committee on Taxation
March	18	Dinner Meeting of Committee on Criminal Courts, Law and Procedure
March	22	Dinner Meeting of Committee on Bill of Rights Dinner Meeting of Committee on Law Reform Meeting of Section on Jurisprudence and Comparative Law
March	23	Meeting of Section on Litigation Meeting of Committee on State Legislation
March	24	Dinner Meeting of Committee on Courts of Superior Jurisdiction *Round Table Conference, 8:15 P.M.* Guest—Hon. Aron Steuer, Justice of the Supreme Court of the State of New York
March	25	Dinner Meeting of Committee on Criminal Courts, Law and Procedure Meeting of Section on Trade Regulation Dinner Meeting of Committee on Trade Regulation and Trade Marks
March	30	Meeting of Committee on State Legislation
March	31	*Ninth Annual Association Night, 8:30 P.M.*
April	1	*Ninth Annual Association Night, 8:30 P.M.*
April	2	*Ninth Annual Association Night, 8:30 P.M.*
April	5	Dinner Meeting of Committee on the City Court of the City of New York Forum of Committee on the Domestic Relations Court Dinner Meeting of Committee on Federal Legislation Dinner Meeting of Committee on Professional Ethics
April	6	Dinner Meeting of Committee on International Law Meeting of Committee on State Legislation

April 7 Dinner Meeting of Executive Committee
Meeting of Section on Labor Law
Meeting of Section on Wills, Trusts and Estates

April 8 Dinner Meeting of Committee on Admiralty
Dinner Meeting of Committee on Domestic Relations Court

April 12 Dinner Meeting of Committee on Medical Jurisprudence
Dinner Meeting of Committee on Municipal Affairs

April 13 *Forum of Committee on Insurance Law*
Meeting of Committee on State Legislation

April 14 Forum of Committee on Foreign Law
Meeting of Committee on Legal Aid at Harvard Club

April 15 Meeting of Committee on Art

April 19 Dinner Meeting of Committee on Bill of Rights
Meeting of Section on Jurisprudence and Comparative Law
Meeting of Library Committee

April 20 Dinner Meeting of Committee on Bankruptcy and Corporate Reorganizations
Meeting of Section on Taxation

April 21 Meeting of Committee on Admissions
Dinner Meeting of Committee on Courts of Superior Jurisdiction

April 22 *Thirteenth Annual Benjamin N. Cardozo Lecture. Speaker—The Honorable David W. Peck, Presiding Justice, Appellate Division, First Department, 8:00 P.M. Buffet Supper, 6:15 P.M.*

April 26 *Forum of Committee on Insurance Law*
Dinner Meeting of Committee on Insurance Law

April 27 *Round Table Conference, 8:15 P.M.* Guest to be announced later.

April 29 Meeting of Section on Trade Regulation
Dinner Meeting of Committee on Trade Regulation and Trade Marks

State Taxes and Practice and Procedure in the Department of Taxation and Finance

By Benjamin B. Bernstein

Deputy Tax Commissioner, New York State Department of Taxation and Finance

I am very grateful for the opportunity and privilege afforded me by your program committee in permitting me to participate in this evening's discussion.

Unlike the tax collector, depicted in cartoon and poetry, I shall endeavor to present a phase of tax effort and administration that bespeaks the fairness and consideration that is each taxpayer's due.

To my mind, a discussion of practice and procedure in the State Tax Department must necessarily be accompanied by a summary of the various forms of taxes administered by the State Tax Commission, including a description of the basis of tax underlying each levy. For that reason, I shall digress to a limited extent to permit you to review with me the state's taxing program.

We can agree at the outset, that my remarks are primarily directed, at that segment of your membership engaged in the general practice of law, who do not have the occasion or opportunity to thoroughly familiarize themselves either with the taxing statutes or the procedures applicable thereto. I can assure you that our State Tax Commission is vitally interested in the basic concept that every taxpayer and of course, every legal representative of a taxpayer, be familiar with the rights and remedies provided by statute, and clarified by regulation and by procedure.

It would be well to bear in mind at the outset that the Department administers the personal Income Tax, the Corporation

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Editor's Note: Mr. Bernstein's paper was delivered before a meeting of the Section on Taxation of the Committee on Post-Admission Legal Education. R. Palmer Baker, Jr., is Chairman of the Section.

Franchise Taxes under Articles 9 and 9-A of the Tax Law, the Gross Receipts Tax on Public Utilities under Article 9-Section 186-A, the Estate Tax, Stock Transfer, Motor Fuel, Alcoholic Beverage, Cigarette, Pari-Mutuel, Racing Admissions, Unincorporated Business, the Truck Mileage, and also Bank Taxes, the Mortgage Tax, as well as the Motor Vehicle Law.

At this point, with your forebearance, let me give you a "thumb nail" description of the most salient features of those forms of state taxes with which you are most concerned in your professional roles.

The State Personal Income statute taxes personal incomes on the basis of net taxable income at progressive rates varying from 2% to 7%. Since 1948 the Legislature has allowed a 10% reduction from these rates. Capital gains are treated separately and are taxed at ½ the rates applicable to ordinary income. As the result of liberalizing legislation of recent years, provision is made for an allowance for medical expenses and life insurance premiums within prescribed limitations. Further, an optional deduction of 10% of gross income with limitation of $500.00, is permitted in lieu of itemized deductions.

The State Corporation Tax on ordinary business corporations (9-A) differs from the Federal Corporation Tax, in that it is a franchise tax for the privilege of carrying on business. The present rate of tax is 5½% on net income, with three alternating bases of tax, specifically (A) one mill on each dollar of the value of business or investment capital allocated to the State of New York; (B) a minimum of $25.00; or (C) a tax based on compensation paid to officers and certain stockholders plus 30% of net income. In the event the 5½% tax on net income falls below any of these, the basis producing the maximum tax controls.

A broad change in the taxation of business corporations occurred in 1944 with the enactment of new Article 9-A. Every corporation is treated as a holding company to the extent it holds investments in subsidiaries, as an investment trust to the extent it holds other securities, and as a business corporation to the extent it is engaged in ordinary business. The revision of the statute has

resulted in removing inequities, and more fairly distributing the Corporation Tax burden.

An organization tax is invoked under the provisions of Section 180 of the Tax Law, of one-twentieth of 1% of par value or five cents per no-par share of authorized capital stock with a minimum of $10.00. The tax is payable at the time of incorporation or upon increase of capital stock, to the Department of State.

A license fee is invoked with respect to foreign corporations not specifically exempt under the provisions of Section 181 of the Tax Law. The license fee is computed on the basis of 1/8 of one percent of issued par value capital stock employed in the state, and six cents on each share of capital stock without par value employed within the state. In the event of change of capital share structure, or increase in capital stock employed within the state, the tax is recomputed and credit given for prior payment. The minimum tax is $10.00.

Historically, it has been the established policy of our law makers to encourage ownership of real property. Thus, true real estate corporations are taxed not on the basis of income, but upon the fair value of gross assets employed or situated within the state during the preceding year. The tax is a franchise tax invoked under Section 182 and the rate of tax is one-fourth of one mill on each dollar of gross assets employed within the state. The minimum tax is $10.00 and there is an additional tax of 2% on allocated dividends paid.

A franchise tax is imposed upon certain transportation and transmission corporations under the provisions of Section 183. The tax is computed upon the basis of the amount of capital stock employed within the state, and three alternative bases of computation are provided for computing the tax. Those corporations, properly taxable under Section 183, are also subject to an additional franchise tax provided by Section 184, the tax being measured at the rate of one-half of 1% of gross earnings within the state. Agricultural cooperative stock corporations are liable to tax under Section 185, and the measure of the tax, as well as the rate, is the same as under Section 183.

Corporations supplying water, gas and steam (delivered thru

mains and pipes) as well as electric lighting and power corporations are liable to franchise taxation under the provisions of Section 186, on the basis of one-half of 1% on gross earnings in the state and 3% of dividends in excess of 4% on paid-in capital stock employed in the state, with a minimum tax provided of $25.00. Public utilities are also liable to a tax at the rate of 2% on the gross income from sales to ultimate consumers within the state, under the provisions of Section 186-A.

Insurance corporations are subject to a franchise tax levied at rates of 1% to 2% according to the type of insurance coverage on gross direct premiums, less return premium applicable thereto, on risks located or resident in the state. Non-United States fire and marine insurance companies pay a rate of one-half of 1%.

It may interest you to recall that state banks, trust companies, financial corporations and foreign banks are taxed on net income for the calendar year next preceding the date when the tax becomes due, at a rate of 4½% with minimum taxes of one mill on each dollar of apportioned capital stock or $10.00, whichever is higher. Savings banks are also taxed under the provisions of Article 9-B, on the basis of 4½% on net income, or 2% on interest credited to depositors, computed as provided by the amended law, or $10.00, whichever is greater. As the result of 1953 legislation, savings and loan associations are taxed in the same manner as savings banks. National banks under Article 9-C are taxed at the rate of 4½% on net income.

The Estate Tax Law provides for taxation of estates at rates ranging from 1% of the net taxable estate not exceeding $150,000.00 to 20% of the net taxable estate in excess of $10,100,000.00 with expanding brackets as the size of the estate increases. The credit allowed taxpayers under the Federal Estate Tax Law permits the use of the State Death Tax payment as a partial offset against Federal Estate Tax liability. The measure of credit is 80%. The 1950 Legislature adopted a marital deduction provision similar to that contained in the Federal Revenue Act of 1948.

The state's Unincorporated Business Tax, enacted in 1935,

invoked a levy at the rate of 4% on the net income of any unincorporated business carried on within the state to the extent such net income is earned within the state. Since 1945, the rate of tax has been 3%. The tax is, in fact, a compensatory or equalizing tax, upon the unincorporated business since a similar effort carried on in corporate form would ordinarily subject the taxpayer to franchise taxes.

The Truck Mileage Tax Law, enacted during 1951 and effective October 1, 1951 imposes a highway use tax for the privilege of operating heavy trucks on the public highways of the state. Carriers operating vehicles on our highways, which alone or in combination have a maximum gross weight of more than 18,000 pounds are subject to the tax.

In the field of excise taxes, a levy at the rate of 3-1/3¢ a gallon is imposed on beer, a rate of 10 cents to 40 cents per gallon on wine depending on the type. With respect to liquor, an impost of 50¢ per gallon is invoked on an alcoholic content not exceeding 24% and the rate is $1.50 per gallon on alcoholic content in excess of 24%. A tax on cigarettes is in effect at the rate of 1½¢ for each ten cigarettes or fraction thereof. Gasoline is taxed at the rate of 4¢ per gallon and Diesel motor fuel at 6¢ per gallon. Stock transfers are taxed at the rate of 1¢ per share for shares selling under $5.00, 2¢ per share for shares selling at $5.00 and under $10.00, 3¢ per share for shares selling at $10.00 and under $20.00, and 4¢ per share for shares selling at $20.00 or over. The rate is 2¢ per share on certain transfers where no sales are involved.

The tax on the privilege of recording mortgages is levied at the rate of 50¢ for each one hundred dollars of the debt secured by the mortgage, and is due upon the recording of the mortgage. The proceeds of this tax, levied under Article 11 of the Tax Law, is distributed entirely to the tax district.

A tax of 15% of the price of the ticket is imposed on admissions to both flat and harness racing events.

It would not be amiss, I am sure, to point out to you the organizational lines established within the Tax Department to administer the several forms of tax I have previously referred to.

The Income Tax Bureau administers the Personal Income Tax as well as the Unincorporated Business Tax and the Bank Taxes. To the Corporation Tax Bureau has been assigned the administration of franchise taxes on business corporations, franchise taxes on real estate corporations, insurance corporations, water, steam, gas and electric companies and agricultural cooperatives, as well as the gross receipts tax on public utilities.

The Miscellaneous Tax Bureau administers the taxes on Motor Fuel, Alcoholic Beverages, Cigarettes, Pari-Mutuel Betting, Racing Admissions, Stock Tranfers, Inheritances and Estates, and supervises the administration of the Mortgage Tax. The Truck Mileage Tax Bureau has administration of the more recently enacted highway use tax known as "The Truck Mileage Tax."

A Collection Bureau was established within the Department in 1952, and acts as a centralized collection medium with respect to delinquencies in payment arising in all bureaus of the Tax Department.

The function of administrative review and technical revision with respect to all taxes rests, of course, with the State Tax Commission.

At this point, we have concluded two preliminary steps in our tour into the state field of taxation. A brief review has been made of the taxing program and we have given heed to the organizational set-up created to administer the program. Once again, I would like to emphasize that this factual material has been presented to assist those of your group who do not specialize in the field of taxation. Perhaps, the fledglings in our midst about to enter upon careers in taxation, will derive some benefit from this "Refresher."

As you know, in the days of yore, taxation was regarded as the means of providing tribute to a reigning monarch. Today, it is recognized as the means of providing citizenry with the essential services, safeguards and facilities, that is its due. Whereas, little more than a decade ago, knowledge of taxing laws was restricted to the so-called "Brain-Trusters," today the vast majority of our

population is familiar with the taxing program of the Federal Government and its political sub-divisions. Since you and I are required to foot the cost of government, it is proper that we know how the bill is computed.

Basically, the concept of good, wholesome taxation takes the form of each citizen paying his pro-rata share. Tax laws must be premised on this assumption and, in addition, must provide for adequate administrative supplementation to accomplish this objective. If I have erroneously overpaid my taxes, I am entitled to a reasonable period of time to ascertain that fact and seek refund. If the taxing authority has audited my return of income and claims additional tax due, again I should have proper time and full opportunity to check into the circumstances. In the event of non-acquiescence in tax findings, assuredly my legal representative or I personally should have opportunity to be heard.

Undoubtedly, in excess of four million taxpayers will file New York State Personal Income Tax returns during the forthcoming collection period. How does this statute provide the safeguards to your clients and to you that I have previously set forth? Section 374 of the Law dealing with revision and re-adjustment provides in substance, that within two years from the time of filing of a tax return, or in the event or recomputation by the Department, within one year from such recomputation, if application for revision or refund be filed by the taxpayer on form prescribed by the Commission, the Tax Commission may grant or deny such application, in whole or in part, and may allow a credit or refund and notify the taxpayer accordingly.

It is fair to assume that a two-year period should be sufficient grace period for any taxpayer to establish he has overpaid a tax. By the same token, I am inclined to the viewpoint that the taxpayer can reasonably ascertain within a one-year period, whether or not a claim made upon him by the Department, is a proper one. It is reasonable to assume, members of your profession, representing taxpayer clients should have no difficulty with the time element provisions I have referred to. Obviously, some time limitation must be provided. Can you conceive of the administrative

problems to be reckoned with in retaining perpetually all of the returns of income filed by personal income taxpayers—when one year's volume alone exceeds four million returns?

At this point in the discourse, for the benefit of the Freshman in the Class—an application for revision or refund, in a form prescribed by the Tax Commission—*means Form I.T. 113!* This form must be filed within the period referred to—for protection of your client's statutory rights!

The statute further provides in substance, that the taxpayer, having received notice in writing from the Tax Commission of the action taken on the application for revision, may pursue his rights further by making demand for hearing within ninety days, after the date of such mailing, upon a form prescribed by the Commission. Here again, novitiates, bear in mind, the *prescribed form is I.T. 114,* and failure to file timely on the prescribed form, will nullify the taxpayer's claim.

Upon filing of the form I.T. 114, the Tax Commission will thereafter extend a hearing to your client, and as provided by statute, if it is established that previous findings of the Department are incorrect, in whole or in part, revision and resettlement will be made, based upon the law and the facts. It is further required that the Commission mail notice of its determination to the taxpayer.

Upon the assumption that a taxpayer is not in agreement with the determination of the Tax Commission and is desirous of proceeding to the courts, Section 375 of the statute provides, that within ninety days after the mailing of the determination, the taxpayer may make application to review the determination. Eight days notice must be given the Commission with respect to the application.

It is further required before making such application for review, that there be deposited with the Tax Commission the full amount of taxes and other charges set forth in the determination, together with an undertaking covering court costs involved. At the option of the applicant, the undertaking may also cover the taxes, interest and other charges covered in the determination.

In addition to all of the foregoing, informal hearings or fact

finding conferences can be availed of by taxpayers, prior to proceeding to formal hearings. These informal conferences oftentimes serve to clarify the issues involved to such an extent that the matter can be satisfactorily disposed of. This interim procedure does not deprive your client of any one of the single remedies provided by law, that I have outlined to you.

My purpose in illustrating this income tax procedural approach is two-fold. Since time will not permit of a similar review with respect to all forms of tax, I have selected the type of tax you are most frequently concerned with. Secondly, it has been my desire to illustrate to you how far-reaching the rights of the taxpayer are protected, and the number of reviews effected of one individual situation to achieve a fair result!

The State Tax Commission in its endeavor to play fair with the taxpayer goes to great lengths to point out to taxpayers in correspondence, dealing with pending matters, the steps to be taken to safeguard the taxpayers' rights!

Since, undoubtedly, many of you are concerned with the handling of franchise tax situations under Article 9-A, and tax situations arising under Article 9 of the Tax Law, I do not wish to overlook calling to your attention that your client's rights to revision are predicated upon the timely filing of Form 7 CT. Sections 214, 215 and 216 fully outline the taxpayer's rights to revision and refund. While I do not anticipate my recommendation will be adopted by the "Book of the Month Club," I strongly recommend this literature for your perusal!

It is only proper that I discuss with you, in short form, the pertinent provisions of the Estate Tax Law. As you well know, jurisdiction in this field is vested in the Surrogate of the county.

The law contemplates that the tax shall be paid within eighteen months of the death of the decedent. Upon appointment of an executor, an advance payment may be made in anticipation of the tax expected to be found due. This payment is deemed to be a deposit and earns discount of 5% if paid within six months from the date of death. (Section 249-Z)

Upon the filing of the necessary schedules with the appraiser, the required review and examination is made, and due notice is

given by mail to the estate representatives of the tentative findings of the Appraiser.

The executor may at this point take up all disputed valuations and deductions with the Appraiser. Thereafter, the Appraiser's report is filed with the Surrogate and an order is signed fixing tax.

In the event the executor is not in agreement with the order, an appeal may be filed with the Surrogate within sixty days from the date of the order fixing tax, setting forth specifically the grounds for the appeal as provided for by Section 249-Z.

The statute further provided relief machinery for the claiming of refund of tax erroneously paid, in that the Surrogate having jurisdiction, may within two years from the date of the order fixing tax, modify or reverse such order, or can modify or reverse such order at any time on an appeal filed within the time prescribed by law.

Even after the formal filing of an appeal from an order fixing tax, the Appraiser will give consideration to pertinent data submitted by the Estate's representatives, tending to establish that the original appraisal was erroneous.

In reviewing this phase of specialized taxation, my purpose has been to point out to you once again there exists adequate remedy so that no hardship need result to any taxpayer.

It is understandable, in spite of all of the safeguards provided by law and regulations, that some taxpayers, not mindful of these provisions, will not protect their rights to revision. Such situations are regrettable and the taxing authority is generally without power to correct the situation. Visualize, if you can, how much more lamentable the problem is when the taxpayer has had legal representation and the same omission occurs.

Oftentimes a taxing agency will promulgate a code of ethics or procedures covering the eligibility and requirements for practice before such an authority. Your State Tax Commission has not seen fit to take such steps nor does it license practitioners. It proceeds upon the premise that in your dealings with the Department, you will adhere to the high standards of your profession!

Although twenty-six years of my life span have been spent in

the field of taxation, I am mindful of the fact that I am still an apprentice. Nevertheless, some of the observations made over the years may be helpful to you and are to be considered by you as merely suggestions.

If you are in doubt as to the procedural approach in furthering a client's claim—consult your local state tax office. It is always best to proceed with certainty!

In the preparation of a claim for revision or refund, or in the drawing up of a statement of facts, specific information and reference to the individual adjustments made will assure much greater comprehension of your problem than will general statements. Taxation is exacting and specific. Your substantiation must adhere to these requirements. Oftentimes if specific information is submitted at this juncture, the matter may be satisfactorily disposed of, obviating the necessity of additional correspondence and hearings.

When you are advised a fact-finding conference or formal hearing has been definitely scheduled by the Department, make all the required arrangements to avail yourself of such hearing on the date indicated. You can well visualize, last-minute requests for postponements disrupt the hearing calendars.

As a layman and not an attorney, may I humbly suggest, when making reference to legal citations, you assure yourself that the facts involved in the cited case generally agree with those present in your client's situation. In all fairness, if you find legal decisions both supporting and refuting your position, endeavor to present both sides of the question. Having done this, there can be no quarrel if you advocate application of the favorable decision.

Not infrequently, an attorney will rely upon the taxpayer's recollection of a transaction as the basis for refuting the position taken by a taxing authority. Since generally the Department's position results from careful review of all of the facts attendant to the transaction, and oftentimes is based upon an examination of the taxpayer's books and records, I cannot stress too strongly to you the logic that you personally check into the transaction and obtain all documentary evidence pertaining thereto. Your client

has no intention of misleading you but ordinarily he is so busily engaged in carrying on his business activities, and the full details of one isolated transaction can have been forgotten long since. Remember also, he is not a tax expert—he is anticipating you will perform this service for him.

Make sure your correspondence is directed to the Bureau charged with administration of the tax you are contesting. This will eliminate delay.

In any discussion pertaining to state taxes, it is interesting to give heed to the viewpoint and approach of the Commission that is charged with the responsibility for administering the taxing program.

Your State Tax Commission some years ago inaugurated the practice of inviting representative taxpayer and professional groups to make recommendations with respect to amendments to the taxing laws of the state. Your association has been included in the roster of these groups, and I know of my own knowledge, has made valuable contributions. In the event recommendations cannot be accepted either by reason of insurmountable administrative difficulties or adverse revenue effect of these proposals, your Commission offers you full explanation. As a matter of fact, in this manner, all proposals subsequently recommended by the Commission are made known to you. This, in my opinion, again constitutes good tax administration.

Last week, Commissioner Allen J. Goodrich announced the formation of a committee made up of representatives of business, the professions and the Tax Department to make a study, for personal income tax purposes, of lump sum payments from pension and profit-sharing trusts. You can well visualize with the increasing tendency on the part of employers to provide incentive to personnel, the tax treatment of this income is of increasing importance. It is anticipated the committee will conclude its studies in sufficient time so that suitable recommendations can be made to the next session of the Legislature.

I can assure you the State Tax Commission gives constant heed to the fairness of the taxing program, and to simplification in

procedures. Each year, numerous interdepartmental surveys are made in furtherance of this aim.

A taxation problem that is ever present relates to the proper allocation of business income with respect to a business operating in several states. It is essential that taxing programs at the state level be so geared that the business be taxed upon a fair basis, on net income and activities carried on within the state. The goal that must be sought contemplates that a business operating in all states of the union, will pay over-all state taxes upon an amount not in excess of its net income.

In this direction, your State Tax Commission has been a pioneer in the field of tax administrators who have been striving for uniform bases of allocation in the taxing laws of all states. Only through this approach can there be a satisfactory solution to the problem. Constant progress is being made toward this accomplishment. In the interim, the State of New York made a forward step in this direction when it enacted new Article 9-A. The basis for apportionment of income provided for in that statute is eminently fair.

Needless to state, there are many more phases of taxation I could discuss with you. Obviously, this subject is so broad and is so important to each of us, only a small segment of the whole picture can be taken up at one session. If the facts I have presented have served to give you a clearer picture of the New York State taxing program, its administration and the procedures supplementing it, I am gratified.

As you undoubtedly know, I am attached to the New York City offices of the Tax Department. Our operations, locally, embrace virtually every form of tax administered by the Department, and a separate unit is maintained and operated for each tax levy. Consultation with our personnel may be of assistance to you.

It may interest you that despite the increasingly large number of field examinations effected annually, every taxpayer receives opportunity to clarify his position before the field examiner's findings are cleared and processed.

Each year thousands of salaried taxpayers receive assistance at

the New York City offices and other local offices throughout the state, in the preparation of their personal income tax returns.

Thus, it should be obvious to you that in every field of its operations, this Department operates upon the premise it is a public agency with a task to perform, in which service to the taxpayer is a vital element. State-wide or locally, the approach is uniform.

In concluding, let me again express my appreciation for the opportunity you have afforded me to direct these remarks to you. My past experience with attorneys has entailed a reverse procedure—you have waxed oratorical and I have listened!

Review of Recent Decisions of the United States Supreme Court

By Joseph Barbash and Robert B. von Mehren

Radio Officers' Union of Commercial Telegraphers Union, AFL v. NLRB

NLRB v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America

Gaynor News Company, Inc. v. NLRB

(February 1, 1954)

Under Section 8 (a) (3) of the Taft-Hartley Act, as under Section 8 (3) of the Wagner Act, it is an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." The Taft-Hartley Act for the first time made it an unfair labor practice for a union "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection [8] (a) (3)." In the instant cases, two involving charges against a union and one against an employer, the Court for the first time explored the subtle nuances of "discrimination. . . to encourage" union membership, and, at the same time, stated some new views pertinent to the more important "discouragement" prohibition.

(1) *The Teamsters case:* Boston, a truck-driver member of Teamsters Local Union No. 41, was late in paying his dues. The Union punished him by dropping him to the bottom of its seniority list for his employer. Under an agreement between the Union and the employer, Boston was thereupon denied certain driving assignments he ordinarily would have had.

On Boston's charge, the NLRB found that the Union had violated Section 8 (b) (2) in that it had caused the employer, which had not been made a party, to violate Section 8 (a) (3). The Union-employer agreement did not meet certain statutory requirements which would have made action pursuant to it an exception to Section 8 (a) (3), and Section 8 (a) (3) was violated because: (a) the employer had discriminated against Boston and (b) the "normal tendency" of its conduct would be to encourage non-members to join the Union and members to retain their good standing in the Union. Moreover, since the discrimination helped the Union to enforce its rules, it was "calculated to encourage all members to retain their membership in

good standing either through fear of the consequences of losing membership or seniority privileges or through hope of advantages in staying in."

The Board entered a cease and desist order against the Union and ordered it to make Boston whole for losses in pay.

The Court of Appeals for the 8th Circuit (196 F. 2d 1) refused to enforce the Board's order, saying there was no substantial evidence that the discrimination did or would encourage or discourage membership in a labor union. Boston had remained a member of the Union and had testified that the discrimination neither encouraged nor discouraged him to stay in the Union. And even if the effect on other employees were relevant, there was no evidence to support a conclusion that they were encouraged or discouraged vis-a-vis membership in the Union.

(2) *The Radio Officers case:* Without first getting clearance from the Radio Officers Union, Fowler, a member of the Union, replaced another member as radio officer of a ship. When the Union objected, Fowler lost the berth. Later the owner of the ship involved sought clearance for Fowler on another of its ships. The Union took the position that it would not clear Fowler with that ship owner, and Fowler did not get the job.

On Fowler's charge the NLRB found the Union had violated Section 8 (b) (2) by causing the employer, which had not been made a party, to violate Section 8 (a) (3). Without dealing with the employer's purpose, the Board found that "the normal effect of the discrimination" was to enforce obedience to Union rules by all Union members, including Fowler. This discrimination thus strengthened the Union and encouraged non-members to join it. The Board entered cease and desist and back-pay orders against the Union.

The Court of Appeals for the Second Circuit (196 F. 2d 960) granted the Board's petition for enforcement, holding that the "result" of the discrimination was "to encourage membership in the Union." It also overruled the Union's contentions that the employer must be joined and that a back-pay order could not be issued against the Union unless the employer were required to reinstate Fowler.

(3) *The Gaynor case:* Pursuant to a collective bargaining agreement with the Newspaper and Mail Deliverers' Union of New York, the Gaynor News Company made certain retroactive wage payments to its employees, but only to those who were members of the Union. The Union was a closed union of the most extreme kind—membership was on the basis of primogeniture—but was recognized as bargaining agent for all of Gaynor's employees.

On a charge by a non-union employee, the Board found that Gaynor had violated Section 8 (a) (3). The employer had maintained its action was based on business considerations alone; indeed, it had argued, its action could not have had the purpose or the effect of encouraging membership in the Union, for Union membership was closed. The Board did not deal with Gaynor's purpose. Section 8 (a) (3) was violated because "the natural and probable effect" of the discrimination was to encourage non-union em-

ployees to join the Union and Union members to stay in the Union. The Board ordered that all non-union employees be given retroactive pay similar to that given the Union employees.

The Court of Appeals for the Second Circuit (197 F. 2d 719) granted enforcement of the Board's order. Although the Union was "closed" it might open up. The extent of the encouragement need not be felt at once; it is enough that "there is a reasonable likelihood that the effects may be felt years later."

The Court granted certiorari in all three cases in the October 1952 term, heard argument and then asked for reargument. In an opinion by Mr. Justice Reed and a concurrence by Mr. Justice Frankfurter, the Court reversed the 8th Circuit in the Teamsters case and affirmed the Second Circuit in the other two cases. Justices Black and Douglas dissented. The net result was that in all three cases the Board was upheld in finding that the Act had been violated.

After first deciding that "membership in any labor organization" should be construed broadly to include "good standing" in a Union, Justice Reed went on to the main issues of motivation and effect. First, he held that the Board must find that the employer's motive was to encourage or discourage Union membership, a conclusion he thought required by statutory history and by the Court's past decisions concerning discouragement of Union membership. He went on to hold, however, that specific evidence of motive (which he proceeded to describe as "intent") was not necessary "where employer conduct inherently encourages or discourages union membership." This is, Justice Reed said, just an application of "the common-law rule that a man is held to intend the foreseeable consequences of his conduct." Thus "an employer's protestation that he did not intend to encourage or discourage must be unavailing where a natural consequence of his action was such encouragement or discouragement."

Justice Reed next treated somewhat similarly the question of whether it must be shown that Union membership—broadly defined—was actually encouraged or discouraged by the discrimination. The Board had said that a tendency to encourage or discourage Union membership is enough and that a "tendency is shown if its existence can reasonably be inferred from the character of the discrimination." This, Justice Reed seems to say, is not the proper test. Actual encouragement or discouragement is required—not simply a tendency. Yet, Justice Reed goes on, the encouragement may be of employees generally—not merely of the employee discriminated against—and it need not have immediate manifestations. More important, "subjective evidence" of employee response is not required. It is enough that it can "be reasonably inferred from the nature of the discrimination." Since the Court had already held that an inherent effect of the discrimination is encouragement of union membership, it must be that the Board may here infer actual encouragement. Nothing offered by the Unions and employers could have successfully rebutted this inference. Thus in all three cases:

> "Since encouragement of union membership is obviously a natural and foreseeable consequence of any employer discrimination at the request of a union, those employers must be presumed to have intended such encouragement. It follows that it was eminently reasonable for the Board to infer encouragement of union membership."

Finally, in the *Teamsters* and *Radio Officers* cases, the employer need not be joined, and the back pay order can be issued against the Union even though the employer was not ordered to reinstate the employee involved. The first is obviously permitted by the Act, and the second is within the permissible discretion of the Board in ordering remedies to effectuate the purposes of the Act.

Mr. Justice Frankfurter concurred in an opinion which, he said, was not in disagreement with Justice Reed's opinion as he read it. Justices Burton and Minton signed not only Justice Reed's opinion, but also Justice Frankfurter's.

Justice Frankfurter first decided that it was not necessary in every case for the Board to determine the "actual aim" of the employer. What the Board must find is whether under all the circumstances the employer's discriminatory acts were such that he should "have reasonably anticipated that they would encourage or discourage union membership."

This can be done in some cases by simply drawing an inference from the employer's act. But "this inference may be bolstered or rebutted by other evidence which may be adduced, and which the Board must take into consideration." The Board's job is to "weigh everything before it, including those inferences which, with its specialized experience, it believes can fairly be drawn." Once this is done, there is "little room for judicial review." Apparently to bear this out, Justice Frankfurter next interpreted the majority opinion as being in accord with his and concluded, without any discussion of the facts or the Board's findings: "In any event, I concur in its [the Court's] judgment."

Mr. Justice Black, joined by Justice Douglas, dissented in all three cases. To establish a violation of Section 8 (a) (3), he would require the Board to find that the employer discriminated "in order to" encourage or discourage union membership. The Board, he points out, made no such findings here, but stated a new rule, contra to the Court's past decisions and to the statutory purpose, that discrimination is outlawed if it has a "tendency to encourage," or if its "natural and probable effect" is to encourage, union membership. By accepting the Board's conclusion without requiring a purposive finding, he charges, the Court "now apparently accepts this interpretation."

Justice Frankfurter's concurrence, unlike most concurrences, may affect the proper construction to be given the Court's opinion. It is arguable that Justice Frankfurter's purported restatement of the Court's opinion need be given no weight inasmuch as of the six signers of that opinion only Justices Burton and Minton were willing to join him in the restatement.

On the other hand, Justice Reed does not have a "court" (a majority of the sitting justices) without Justices Burton and Minton. If Justices Black and Douglas were acquiescent dissenters, this question might be easily resolved, for they apparently agree with Justice Frankfurter's interpretation of the majority opinion. However, they linger in dissent as frequently as any other justices in the Court.

Fortunately, it probably does not matter. The chief difference between Justice Reed's approach and Justice Frankfurter's is that the former took one more step in his reasoning: rather than springing directly from reasonable anticipation to violation, as does Justice Frankfurter, Justice Reed insists on going intermediately to forbidden motive. But by using the crutch of conclusive presumption, Justice Reed makes the conclusion an inevitable one. Perhaps more important, Justice Reed affirmed the Board without requiring it to state that it had taken the intermediate step. In view of this, the Board in future cases might safely omit statements concerning motive when it finds that the employer should have reasonably anticipated encouragement or discouragement. Justice Reed apparently felt the need for a crutch because, as writer for the majority, he had to deal with possibly contrary cases and statutory history. It may be that the crutch, once used, may now be thrown away, and the intermediate step, once articulated, may now be omitted. In any event, if the Board should omit to use the words "and therefore we infer that the employer's motive was to encourage union membership," the situation would be rare where a litigant would be well-advised to take an expensive appeal in order to obtain a remand for their inclusion.

CAB V. SUMMERFIELD, POSTMASTER GENERAL, ET AL. (2 CASES)

DELTA AIR LINES, INC. V. SUMMERFIELD, POSTMASTER GENERAL, ET AL.

WESTERN AIR LINES, V. SUMMERFIELD, POSTMASTER GENERAL, ET AL.

(February 1, 1954)

Section 406 (a) of the Civil Aeronautics Act authorizes the CAB to fix "fair and reasonable rates of compensation for the transportation of mail by aircraft." In setting such rates, Section 406 (b) requires the Board to consider, *inter alia*

> "the need of each such air carrier for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to main-

> tain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense."

These cases are concerned with the meaning in different factual contexts of the words "the need of each such air carrier" and "all other revenue of the air carrier" as used in Section 406 (b).

In October 1951 the CAB awarded Delta Air Lines, the successor by merger to Chicago and Southern Air Lines, subsidy mail pay on C & S's Latin American routes for the period November 1, 1946 to December 15, 1950. In fixing this retroactive mail pay, the CAB refused to offset against the carrier's "need" for foreign operations its excess earnings on its domestic flights. It based its refusal on two "considerations of economic policy": (1) that to offset would put an "unjustifiable strain" on domestic operations, and (2) that its regulatory task would be simplified by maintaining "the comparative status between those domestic operators which have foreign routes as against those which do not have foreign routes."

On the Postmaster General's petition for review the Court of Appeals for the District of Columbia reversed the CAB. 207 F. 2d 207. The Supreme Court granted certiorari and held, in a unanimous opinion written by Mr. Justice Douglas, that

> "the application of the 'need' clause which the Board has made in this case is at war with the language of §406 (b). The standard is 'the need of each such air carrier.' The 'need' of the carrier is measured by the entirety of its operations, not by the losses of one division or department. . . . the wording of the Act precludes measuring 'the need' of the carrier by any other unit than the carrier as an entity."

The cases involving Western Air Lines presented a somewhat different situation. There the CAB had refused to reduce Western's subsidy mail pay allowance by the profit realized by Western Air Lines from the sale of the "intangible value" of a certificate of convenience and necessity. The Board refused to offset because it wanted "to encourage improvement of the air route pattern through voluntary route transfers by other air carriers."

The Postmaster General appealed to the Court of Appeals for the District of Columbia the Board's refusal to offset. That court reversed the Board and ordered that the offset be made. 207 F. 2d 200. The Supreme Court granted certiorari and, in another unanimous opinion by Justice Douglas, held against the Board. The Board had forsaken the "need" standard prescribed by Congress and adopted a different standard, the encouragement of voluntary route transfers. But the question of "need" is measured by the applicant carrier's economic position and not by considerations of improvement in the national route pattern, however desirable the latter objective may be. And the CAB had made no finding that there was "need" for Western to retain the profit made from the sale of the "intangible value" "in the sense that otherwise Western would not have been willing or able to make the

transfer of Route 68 in accordance with the development program which the Board deem[ed] advisable." The Court, however, refused to decide whether such a finding "would have satisfied the statutory requirement."

These cases mark the first time that the CAB has lost a case in the Supreme Court. Airline industry comment has been swift and apprehensive. As to the *Delta* decision, the fear has been expressed that some of the larger airlines may be forced to set up separate corporations to operate their international routes and that smaller carries may be forced to abandon their international operations. As to the *Western* decision, it has been observed that voluntary route transfers have been made more difficult. See *American Aviation Daily*, February 1 and 2, 1954.

In its concluding sentences in the *Delta* opinion the Supreme Court recognized that maximum operating efficiency on the part of air carriers and the development of air transportation might better be served by setting subsidy rates on a divisional rather than on a system basis. Perhaps this is an indirect recognition by the Court that the results reached in these cases are undesirable though required by the Civil Aeronautics Act. The Court characterized the issues decided by it, however, as "a matter of policy for Congress to decide."

Review of Recent Decisions of the New York Court of Appeals

By Joseph H. Flom and Sheldon Oliensis

DUANE JONES COMPANY, INC. V. BURKE

(306 N.Y. 172, January 7, 1954)

Plaintiff, an advertising agency, brought this action against, among others, eight of its former employees and a new agency formed by three of them and employing four more. The complaint sought damages sustained as a result of an alleged conspiracy by the defendants to deprive plaintiff of its principal customers and key employees.

In the first six months of 1951, plaintiff had lost three accounts with gross billings of $6,500,000 out of the agency's total of $9,000,000. Three executives and certain staff members resigned. It also appeared that Duane Jones, the dominating personality and policy maker of the agency, had been "guilty of certain behavior lapses."

On June 28, 1951, a group of plaintiff's officers and employees, including all the individual defendants, met and agreed to take over the business of

the agency, either by purchasing Jones' interest in the corporation or by resignation en masse and the formation of a new agency. It was also proposed that the employees inquire of the accounts which they serviced whether the accounts would favor such a move. Several days later, Jones was informed of these alternatives and was advised that the agency's customers had been presold on the plan. After protracted negotiations, Jones rejected the purchase offer.

On August 17, five defendant employees were discharged, with two weeks severance pay. On or prior to August 17, the three other individual defendants notified plaintiff of their intent to resign, effective on various dates up to September 30.

On August 23, the new agency was formed. Six weeks later, 71 of plaintiff's 132 former employees were working for the new agency, including seven of the eight employee defendants; ten former accounts had switched to it.

The Court of Appeals (Mr. Justice Van Voorhis taking no part) unanimously affirmed a jury verdict of $300,000 against the eight former employees, while reversing the judgment against the new agency because of certain pleading defects. In so doing, it reinstated a judgment, dismissed by the Appellate Division, against one employee, Hayes, who had not joined the new agency, but had taken a job with another agency and had diverted one account to it.

The conduct of these defendants, the Court held, in an opinion by Chief Justice Lewis, had fallen below the standard required by the law of one acting as an agent or employee of another. The evidence demonstrated that the individual defendants, while still in plaintiff's employ, had determined on a course of conduct which, when subsequently carried out, resulted in benefit to themselves through destruction of plaintiff's business in violation of their fiduciary duties of good faith and fair dealing. It was immaterial that plaintiff's agreements with both customers and employees were mutually terminable at will.

While the decision rests on the breach by the defendants of their fiduciary duties as employees, it is not wholly clear what the Court considered as the significant liability-creating element. The breach may have consisted in entering into an overall conspiracy whose objectives were adverse to the interests of their employer, rather than in any specific acts of the type relied on in the usual "faithless employee" cases. For example, the Court stated that the jury might have found that the conspiracy antedated the defendants' giving of notice to plaintiff of their intention to resign, and, for this reason, the Court apparently considered it immaterial whether or not defendants' solicitation and acceptance of the accounts took place *after* defendants had given such notice.

Yet the Court did discuss the periods between the defendants' giving of notice and the effective dates of the resignations. For this reason and because of other expressions in the opinion, the decision may be read as condemning, regardless of conspiracy, any attempt by an *individual* employee, prior to complete severance of the employment relationship, either to solicit his

employer's customers or to persuade fellow employees to leave with him. If so, the decision may have laid down new criteria in delineating the scope of an employee's fiduciary duties.

The reinstatement of the judgment against Hayes, the defendant who had not joined the new agency, is worthy of note. The Appellate Division had exempted Hayes on the ground that he had derived no profit from the new corporation. The Court of Appeals found, however, that since he had participated in the conspiracy, his failure to become associated with the new agency was not conclusive as to his liability. Since Hayes had diverted to his new employers one account which formerly belonged to plaintiff, it went on, he had benefitted from plaintiff's dismemberment. The opinion thus is not clear as to whether it rejects completely the "benefit" test which was the touchstone of the prevailing opinion of the Appellate Division, and whether a participant in the conspiracy who diverted no accounts to his own benefit would be exempted from liability.

The decision is of particular interest because it attaches liability to a practice prevalent in the advertising field and not unknown in other areas: the departure of an executive from an agency, taking with him personnel of his employer and one or more accounts which he previously serviced. In view of the prevalence of this practice, the decision may act as a spur to further litigation in this field. Should this occur, lower courts will be faced with the task of defining, from case to case, the precise boundaries of an employee's liability in comparable situations and in prescribing which practices are consistent and which inconsistent with his fiduciary duties to his employer.

EISENBERG V. CENTRAL ZONE PROPERTY CORPORATION

(306 N.Y. 58, October 22, 1953)

The principal stockholders of defendant, a New York corporation, desired to facilitate the sale of the corporate assets. In order to secure certain tax advantages, it was essential that any such sale of the corporate property be effected by transfer of the corporation's stock, rather than of the assets themselves. The principal stockholders had also determined that a better price could be obtained for the stock if it could be sold *as a unit*. In order to enable such a unit sale of stock to take place, the following plan was initiated:

(i) New York Corporation would transfer all its assets to a Delaware Corporation to be formed and would receive in exchange all the stock of Delaware Corporation;

(ii) New York Corporation would place all such stock in a voting trust;

(iii) New York Corporation would then be liquidated and the voting trust certificates distributed to its stockholders.

By the terms of the voting trust agreement, the voting trustees (two directors and a shareholder of New York Corporation) would have power to sell all of Delaware Corporation's stock as a unit (upon the approval of the holders of trust certificates representing two-thirds of the deposited shares) and also to form a new corporation to lease back from its ultimate owner the property initially transferred by New York Corporation.

Upon learning of the plan, a minority stockholder of New York Corporation brought this action to enjoin the described series of transactions. Plaintiff moved for judgment on the pleadings; the Court of Appeals, reversing the Appellate Division, First Department, unanimously ordered the judgment granted. The opinion was written by Mr. Justice Conway, and Mr. Justice Fuld concurred in a separate opinion. Mr. Justice Van Voorhis took no part.

The Court made no finding that fraud or bad faith was involved; nevertheless, it granted the requested injunction, on the ground that "stockholders may not be forced out of corporations by any such method at the hands of directors or officers or 'principal stockholders.' " It noted that the extensive powers to be given the voting trustees apparently contemplated a continuation of the enterprise in a new form after the formal sale of assets to Delaware Corporation. And it dismissed as without merit the defendants' contention that the plan was authorized by Section 20 of the New York Stock Corporation Law, which gives appraisal rights to dissenting stockholders in connection with certain sales of corporate property.

While the initial step of the plan would seem to be clearly within the purview of Section 20, the Court pointed out that the "end to be accomplished" was the *unit* sale of New York Corporation's stock. The plan (apparently, when considered as a whole) unlawfully took from plaintiff many of his stockholder rights and imposed "restrictions upon him never contemplated by any of *our* statutes." (emphasis supplied)

The concurring judge was more explicit. In his view, the "series of transactions" contemplated by the plan involved far more than "sale" or "conveyance" of corporate assets within the meaning of Section 20, and there was therefore no legislative warrant for limiting plaintiff to his appraisal rights.

The Court's refusal to permit this use of the corporate laws to force a dissenting stockholder to accept appraisal, even where apparently neither fraud nor bad faith was involved, may affect the validity of corporate transactions under the merger as well as under other provisions of the corporate laws. Even more far reaching, however, would be the theory explicitly enunciated in the concurring opinion that, in order for a series of corporate transactions to be valid, the end result of the transactions *as a whole* must have legislative sanction. Such a rule would cast doubt upon the validity of any series of transactions by a New York corporation for the purpose of securing the benefit of special provisions of the corporate laws of other states, since, by hypothesis, in each such case the purpose of the series of transactions is to accomplish something which the New York legislature has not authorized.

Committee Reports

COMMITTEE ON LABOR AND SOCIAL SECURITY LEGISLATION

REPORT ON H.R. 6812 PROVIDING FEDERAL OLD AGE AND SURVIVORS INSURANCE FOR LAWYERS, AMONG OTHERS

At the annual meeting of the Association held on May 13, 1952, the report of this Committee recommending endorsement of a bill to provide Federal Old Age & Survivors Insurance on an optional basis for self-employed practicing lawyers was adopted. The bill failed of enactment. The opposition to the bill in Congress was based partly on its optional feature.

In his message to the Congress on February 2, 1953, President Eisenhower recommended extension of the Old Age and Survivors Insurance Law to "millions of citizens who were left out of the social security system."

The Secretary of Health, Education and Welfare, in moving toward implementation of the President's message, appointed a Committee of twelve consultants (known as Consultants on Social Security) to study the subject and make recommendations. These consultants were drawn from the ranks of businessmen, bankers, lawyers, educators, economists, union consultants and farm organization officials.

Among their recommendations was one that the law should be extended to "cover self-employed professional persons on the same basis as other self-employed non-covered***." This would include architects, doctors, dentists and several other professions in addition to lawyers, presently excluded.

Following the President's message and the filing of the report by the Consultants on Social Security, Congressman Daniel A. Reed introduced a bill (H.R. 6812) on August 3, 1953, to accomplish the same result as that recommended in the report of the Consultants on Social Security.

In our previous report to the Association on this subject, we said: "The same considerations which led to the enactment of social security protection for the nation at large apply to the legal profession. In the present state of the law, the practicing lawyer is not only denied this protection, but is excluded as well—by reason of his inability to use the corporate form of organization—from providing pension benefits enjoyed in the field of commerce as a cushion against old age and declining earning capacity. This Committee believes that the enactment of the amendment is a desirable step toward equalizing the position of the practicing lawyer with that of the businessman."

We still believe in the principles expressed in the foregoing statement. The elimination of the optional feature does not alter our view that this is basically sound and desirable legislation. There is much to be said for the argument that it would be economically unsound to give lawyers an option (not accorded others) which would attract those who had most to gain by coverage and leave others, whose contributions would help to level out the cost of benefits, free to reject coverage.

We recommend a change to eliminate an inequity which would otherwise arise to the disadvantage of those engaged in one of the newly covered occupations.

A person working in covered employment or a presently covered self-employed person (not one to whom coverage would be extended by H.R. 6812,), to be eligible for benefits, must have forty quarters of coverage, or, failing this, at least one quarter of coverage for every two quarters after 1950 (or after the quarter in which he reaches the age of 21, whichever is later), up to but excluding the quarter in which he reaches his sixty-fifth birthday or dies. In the event eligibility is claimed under the latter category, the applicant must have not less than six quarters of coverage.

The key date for computation of benefits for persons not having forty quarters of coverage is January 1, 1951. There is no provision in H.R. 6812 to compensate for the time difference between the 1951 date and the passage of H.R. 6812, which, of

course, cannot be earlier than 1954. Thus, persons to whom coverage is not extended before 1954 (or later) would nevertheless be required to use January 1, 1951, as the base date in computing their eligibility for benefits, and any benefits due them would be reduced or delayed accordingly.

It is therefore the recommendation of the Committee that the formula for computing the average monthly wage for all covered persons be revised so as to eliminate from consideration the three-year (or longer) period between January 1, 1951, and the effective date of H.R. 6812, or, in the alternative, that H.R. 6812 be amended by adding a provision establishing the effective date of the amendment as the base date for the computation of benefits for all persons covered thereunder.

This Committee accordingly recommends the adoption of the following resolution:

"RESOLVED, that The Association of the Bar of the City of New York approves and urges adoption of the provisions of H.R. 6812 which extend coverage under the Federal Old Age and Survivors Insurance Law to lawyers, among others presently excluded, with an amendment to avoid any inequity arising from application of the existing base date of January 1, 1951, to occupations not previously covered by the Act."

Respectfully submitted,

COMMITTEE ON LABOR AND SOCIAL SECURITY LEGISLATION

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January 29, 1954.

COMMITTEE ON PROFESSIONAL ETHICS

The Committee on Professional Ethics, of which James H. Halpin is Chairman, has recently received and answered the following inquiry:

Mr. (hereinafter called "A"), a graduate of the New York Law School, who has not yet been admitted to the Bar, and myself (a lawyer hereinafter sometimes called "B") want to associate ourselves informally under the name of A and B as "Personal Estate Planners." A is presently associated with a life insurance company and both he and I, for some time, have been interested in the possibilities in the field of estate planning. I have made a considerable study of this field and feel that I may be successful in it. I do not propose to work at it more than part time, since the major part of my time will henceforth be spent in Washington, D.C. It is not the intention of A nor myself to employ our association as estate planners in any way as the feeding of legal business to me but, in all candor, it is our intention to make use of my comparatively extensive connections in order to obtain business along business and life insurance lines.

I hold my membership in the Bar in a much higher esteem than any business connection past, present and future, and should my association with any such business ever lead to a conflict with my duties as a member of the Bar I shall, of course, immediately disassociate from such business.

It is the opinion of the Committee on Professional Ethics that it is improper for an attorney to enter into an arrangement such as you describe.

Opinion No. 825 rendered under date of March 4, 1942 sets forth our views in the following language:

> Although an attorney may engage in other occupations in addition to the practice of the law, he may not with professional propriety engage in a business so similar to the practice of the law that if both are conducted at the same place, the public is likely to be confused or deceived, nor may he permit his business to become a cloak for the solicitation of legal business or for the procurement of professional employment.

It is the opinion of the Committee that neither the fact that the conduct of the estate planning may be in offices separate from your law office nor that the major part of your time will be spent in Washington removes the impropriety of your planned association.

The business of estate planning, though theoretically and professedly distinct, is one closely related to the practice of law and one which frequently involves the solution of what are essentially legal problems. It is common knowledge that many lawyers are engaged exclusively in solving problems of

estate planning and it cannot be denied that they are engaged in the practice of law; in fact, in the opinion of the Committee, wherever a member of the Bar performs such services, he is engaged in the practice of law. Thus it is concluded that an association with a layman to render such services violates the spirit of the Canons of Professional Ethics (see Drinker, *Legal Ethics*, p. 222, and App. A, 43).

Other professional ethical considerations may be involved. Thus, it would be difficult to avoid using the business association as a method of soliciting legal business in violation of Canon 27 (see American Bar Association Opinions, Nos. 57, 183, 223). It would also invite the layman-associate to circularize your legal opinions or conclusions for compensation, or otherwise use your legal services in violations of Canon 35 which calls for a lawyer's relation to his client being personal and not being exploited by any lay agency. If, as is likely, one source of compensation for your services in connection with estate planning would be a share in insurance commissions, it would be a professional impropriety in violation of Canon 6 from the standpoint, among other considerations, of conflicting interests, through the sharing of such commissions, unless all the circumstances were disclosed to and consented to by clients. Finally, the business arrangement would make likely the sharing of your legal fees with a layman in violation of Canon 34.

JAMES H. HALPIN
Chairman

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RECENT LITERATURE ON CIVIL SERVICE LAW

Governments, like clocks, go from
the motion men give them.

WILLIAM PENN

In 1872 Congress authorized a system of competitive appointments for federal jobs but abruptly abandoned it in 1874. Some men of all parties had been greatly disturbed by the advent in 1829 of the policy "To the Victor Belongs the Spoils." The National Civil Service Reform League held its first meeting in 1881 at Newport, Rhode Island. On January 6th 1883 the Pendleton Bill passed both houses by large majorities and President Arthur immediately signed it. It established competitive examination for appointment to federal office and the creation of a Civil Service Commission which was charged with the execution of the provisions of the act, for the establishment of proper test for government positions and for careful enforcement of rules of elegibility. The President in conformity with this act attempted to make his appointments with a view to public service.

Washington in his eight years in office replaced only nine persons and these all for cause, John Adams nine in four years, but Adams made many appointments just before leaving office which Jefferson considered unfair and he removed thirty-nine in eight years. Nevertheless, in the twenty years following the Jefferson term only sixteen were removed from office between 1808 and 1828. In 1820 Congress fixed the term of a large number of important offices at four years even though this act incurred the displeasure of both Jefferson and Madison.

From the above it is clearly indicated that the problem of the public office holder has been one which has been of concern since the formation of the Union. The protection of the faithful

civil servant, the raising of qualifications for office of such servants is not a new problem. The caliber of the government you get depends upon the men who run it, your elected office holder and your civil servant.

Grover Cleveland in 1883 suggested to the Legislature of the State of New York that "The appointment of subordinates in the several state departments and their tenure of office or employment should be based on fitness and efficiency, and that this principle should be embodied in legislative enactment, to the end that public policy of the state may conform to the reasonable public demand on that subject."

The Legislature, at the same session, enacted Chapter 354 which provided for a Civil Service Commission. Ever since there has been a constant demand for the improvement of civil service statutes in this State.

In the study and re-examination of the civil service it is hoped that the following bibliographical material will be found useful.

Administrative Law-Hearing. Examiner grades, promotion, rotation in force. 1953. 28 N.Y.U.L. Rev. 1311–6.

Association of the Bar of the City of New York. Committee on Municipal Affairs. Memorandum on bills introduced in the Council of the City of New York "To amend the administrative code of the City relating to payment of pension to and retirement of police officers. New York. 1950.

Association of the Bar of the City of New York. Committee on Municipal Affairs. Opposing bills Int. 56 and 280 dealing with City's Police and Fireman pension funds. New York. 1950.

Association of the Bar of the City of New York. Committee on Municipal Affairs. Report of sub-committee on municipal employees. New York. 1949.

Association of the Bar of the City of New York. Committee on Municipal Affairs. Walter A. Gorman and Edward Rogers, Jr. pltff. appl't., against the City of New York et al. Brief of the Association of the Bar of the City of New York, amicus curiae. New York. 1952. 14 p.

Beyer, William Carl. Limited-term and excepted appointments in the Civil Service. Philadelphia. 1953. 186 p.

Bontecou, E. English policy as to Communists and Fascists in the Civil Service. 1951. 51 Colum. L. Rev. 564–86.

Brady, R. W. Government's policy regarding the public and its servant. 1952. 3 Labor L. J. 555–7.

Burroughs, G. A. Constitutionality of state legislation affecting public employees. 1950. 18 Geo. Wash. L. Rev. 541–56.

Cahn, F. Federal employees in war and peace. Brookings. 1949.
Carpenter, William S. Reformer's task never done. 1952. 41 Nat. Mun. Rev. 339–45.
Carpenter, William S. The unfinished business of civil service reform. Princeton, Princeton Univ. Press. 1952. 128 p.
Civil Service Commissioner Moore talks Turkey. 1953. 1 Fed. Bar News. 13–14.
Civil service law reporter. New York, National Civil Service League. 1951 to date.
Constitutional law—state veterans preference acts. 1952. 2 St. Louis U. L.J. 85–7.
Corson, John Jay. Executives for the Federal Service; A program for action in time of crisis. New York, Columbia Univ. Press, 1952. 91 p.
Crowley, K. D. Status of separated career employees. 1953. 1 Fed. Bar News. p. 18.
Currey, R. G. Brief on behalf of twelve incumbent hearing examiners of the Interstate Commerce Commission. 1949. 16 I. C. C. Pract. Jour. 717–31.
Documents and reports to accompany report on civil service improvement. Washington. 1942.
Donovan, W. J. and M. G. Jones. Program for a democratic counter attack to Communist penetration of government service. 1949. 58 Yale L. Jour. 1211–41.
Douglas, A. G. Science or novelty in civil service? 1950. 10 Pub. Admin. Rev. 78–85.
Duty of union to minority groups in the bargaining unit. 1952. 65 Harv. L. Rev. 490–502.
Emerson, T. L. and D. M. Helfeld. Loyalty among government employees. 1948. 58 Yale. L. J. 1–143, 412–21.
Employer must comply with settlement agreement containing promise to bargain, despite union's subsequent loss of majority. 1952. 32 B.U.L. Rev. 234–7. 1952. 65 Harv. L. Rev. 891–2.
Employment of lawyers in municipal civil service. 1952. 1 N.Y.L.S. Student L. Rev. 103–10.
Epstein, L. D. Political sterilization of civil servants. 1950. 10 Pub. Admin. Rev. 281–90.
Esman, M. J. The Hatch Act—a reappraisal. 1951. 60 Yale L. Jour. 986–1005.
Executive Order 9835—prescribing procedures for administration of employees loyalty program. 1951. 51 Colum. L. Rev. 558–63.
Federal employees—removal—right to notice of reasons. 1951. 2 Mercer L. Rev. 438–9.
Feinberg Law preamble and bills of attainder. 1951. 15 Albany L. Rev. 184–9.
Fleming, A. S. Civil servant in a period of transition. 1953. 13 Pub. Admin. Rev. 73–9.

Gardner, G. K. Bailey v. Richardson and the Constitution of the United States. 1953. 33 B.U.L. Rev. 176–203.
Gardner, G. K. The great charter and the case of Angilly v. United States. 1953. 67 Harv. L. Rev. 1–27.
Gladieux, B. L. Civil service versus merit. 1952. 12 Pub. Admin. Rev. 173–7.
Good Government: Official Journal of National Civil Service League. 1945 to date.
Greer, S. A bibliography of Civil Service and personnel administration. New York and London. 1935.
Gulick, L. Improved personnel in government service. Philadelphia. 1937.
Hall, C. C. and H. H. Leich. The human touch in civil service placement. 1952. 12 Pub. Admin. Rev. 178–80.
Hyneman, Charles Shang. Bureaucracy in a democracy. New York, Harper. 1950. 586 p.
Incident in federal employee loyalty program. 1950. 12 Univ. of Pittsburgh L. Rev. 89–95.
Jones, H. L. Personnel management. Haynes Foundation. 1952.
Judicial review of Illinois Civil Service Commission findings. 1953. 20 Univ. Chi. L. Rev. 741–7.
Kaplan, H. Eliot. Legal trends in civil service. N.Y.U. School of Law. 1945. 348–371.
Kaplan, H. Eliot. Pennsylvania's civil service merit system. 1949. 38 Nat. Mun. Rev. 448–50.
Laski, Harold J. Reflections on the Constitution, the House of Commons, the Cabinet and the Civil Service. Manchester Univ. Press. 1951. 220 p.
Leich, H. H. The Hoover Commissions personnel recommendations. 1953. 47 Am. Pol. Sci. Rev. 100–25.
Lewis, E. A. United States Civil service preference, retirement, and salary classification laws. Supt. of Doc. 1952. 823 p.
Loyalty program—right to trial upon dismissal. 1950. 99 Univ. Pa. L. Rev. 98–100.
McCarran, P. Supreme Court and the loyalty program. 1951. 37 A.B.A. Jour. 434–7, 476–7.
McElwain, E. and J. Vorenberg. Federal conflict of interest statutes. 1952. 65 Harv. L. Rev. 955–83.
McQuoid, George and A. D. Palley. Helping the merit system work. 1953. Personnel Admin. 15–18.
Meriam, Lewis. Public service and special training. Chicago, Univ. of Chicago Press. 1936. 83 p.
Milwaukee, Wisc. Board of City Service Commissioners. Civil service in the city of Milwaukee. City Hall. 1952. 254 p.
Model municipal civil service rules. Albany. 1931.
Moore, G. M. New horizons in personnel management. 1953. 14 Personnel Rev. 97–101.

Morstein, Marx, Fritz, ed. Public management in the new democracy. New York and London, Harper & Bros. 1940. 266 p.

Mosher, William Eugene. Public personnel administration. 3rd ed. New York, Harper. 1950. 652 p.

National Civil Service League. Annual reports. 1944 to date.

National Civil Service League. Employee organizations in the public service. New York. 1945. 31 p.

National Civil Service League. A model state civil service law. New York. 1953. 32 p.

National Institute of Municipal Law Officers. Labor unions and municipal employee law. The Institute. 1949.

New York City. Civil service commission. Annual reports. New York.

New York City. Civil service. Manual of procedure in disciplinary actions. 1952. 20 p. mimeo.

Objectivity in civil service oral examinations. 1949. 58 Yale L. Jour. 1179–86.

Pennsylvania Veterans Preference Act granting ten additional points to veterans who pass civil service promotional exams unconstitutional as class legislation. 1952. 40 Geo. L. Jour. 351–4., 1952. 65 Harv. L. Rev. 505–7., 1952. 36 Minn. L. Rev. 410–14., 1952. 31 Neb. L. Rev. 489–92., 1952. 100 Univ. Pa. L. Rev. 578–82., 1952. 14 Univ. Pittsburgh L. Rev. 425–8.

Practical considerations in formation of code of ethics for government employees. 1952. 52 Colum. L. Rev. 113–24.

Public Personnel Quarterly. 1939 to date.

Ramspeck, R. Administrative flexibility in the federal civil service. 1952. 12 Pub. Admin. Rev. 234–41.

Review of removal of federal civil service employees. 1952. 52 Colum. L. Rev. 787–98.

Richardson, S. W. Federal employee loyalty program. 1951. 51 Colum. L. Rev. 546–58.

Scott, F. R. The world's civil service. 1954. 496 International Conciliation. 259–320.

Shaw, W. W. Independent civil service commissions and executive power. 1953. 14 Pub. Personnel Rev. 113–6.

Siegel, F. W. Application and scope of New York State constitutional merit system provision. 1951. 20 Fordham L. Rev. 289–304.

Simpson, J. R. Improving public management. 1949. 9 Pub. Admin. Rev. 100–6.

Some recent dispute decisions. 1953. 4539 Local Gov't Chronicle. 1489–90.

Spann, R. N. The American civil service. 1953. Three Banks Rev. 18–26.

Spann, R. N. Civil servants in Washington. 1953. 1 Pol. Studies. 143–61.

Spero, Sterling Denhard. Government as employer. New York, Remsen Press. 1948. 497 p.

Stromsem, K. E. and M. Dreese. Attitudes of NIPA interns toward a career in the federal service. 1950. 10 Pub. Admin. Rev. 254–61.

Syracuse University. Maxwell Graduate School of Citizenship and Public Affairs. Attitudes of scientists and engineers about their government employment. Syracuse, Maxwell School. 1950.

Torpey, W. G. Public personnel management. Van Nostrand. 1953.

U.S. Civil Service Commission. Annual reports. 1943 to date.

U.S. Civil Service Commission. Basic acts, rules, and regulations governing employment in the federal competitive civil service. Washington, May, 1952.

U.S. Civil Service Commission. History of the federal civil service, 1789 to the present. Washington, U.S. Govt. Print. Off., 1941. 162 p.

U.S. Civil Service Commission. Library. A bibliography of public personnel administration literature. Washington. 1949.

U.S. Congress. House. Committee on Civil Service. Civil service courts or boards of appeals. (76.3) Washington, Gov't. Print. Off. 1940. 113 p.

U.S. Congress. House. Committee on Post Office and Civil Service. Federal employees' loyalty act. Hearings. (80.1) Washington, Gov't. Print. Off. 1947. 118 p.

U.S. Congress. House. Committee on Post Office and Civil Service. Investigation of employee utilization in the executive departments and agencies. (81.2) Washington, Gov't. Print. Off. 1950. 217 p.

U.S. Congress. House. Committee on Post Office and Civil Service .... Providing for removal from, and the prevention of appointment to, office or positions in the executive branch of the government of persons who are found to be disloyal to the United States. (80.1) Washington, Gov't. Print. Off. 1947. 10 p.

U.S. Congress. House. Committee on Post Office and Civil Service. Recognition of representatives of Federal employee organizations in grievance procedures. Hearings. Washington, Gov't. Print. Off. 1952. 74 p.

U.S. Congress. House. Committee on Post Office and Civil Service. To protect the national security of the United States. Hearings. (81.2) Washington, Gov't. Print. Off. 1950. 102 p.

U.S. Congress. House. Committee on Un-American Activities. Methods of Communist infiltration in the United States Government. Hearing. (82.2) Washington, Gov't. Print. Off. 1952. 3345–3452.

U.S. Congress. Senate. Committee on Civil Service. Civil service retirement for certain elective officers. (77.2) Washington, Gov't. Print. Off. 1942. 77 p.

U.S. Congress. Senate. Committee on Civil Service. To prevent discrimination in legal appointments and promotions. Hearing. (76.1) Washington, Gov't. Print. Off. 1939. 78 p.

U.S. Congress. Senate. Committee on Foreign Relations. State Department loyalty investigation. Washington, Gov't. Print. Off. 1950. 2 pts.

U.S. Congress. Senate. Committee on Post Office and Civil Service. Appeals and grievance procedures in the Federal Government. Report. (83.1) Washington, Gov't. Print. Off. 1953. 33 p.

U.S. Congress. Senate. Committee on Post Office and Civil Service. Bills to implement recommendations of the Commission on Organization of

the Executive Branch of the Government. Hearings. (82.1) Washington, Gov't. Print. Off. 1951. 123 p.

U.S. Congress. Senate. Committee on Post Office and Civil Service. Officers and employees of the Federal Government. Hearings. Washington, Gov't. Print. Off. 1947.

U.S. Congress. Senate. Committee on Post Office and Civil Service. Supervisory selection in the Federal Government; a report with conclusions and recommendations made as a result of the investigation into the personnel needs and practices of the various governmental agencies. Washington, Gov't. Print. Off. 1952. 41 p.

U.S. Congress. Senate. Committee on Post Office and Civil Service. To preserve the equities of permanent classified civil service employees. Hearing. (81.1) Washington, Gov't. Print. Off. 1949. 100 p.

U.S. Congress. Senate. Committee on Post Office and Civil Service. Training and education in the Federal Government. Washington, Gov't. Print. Off. 1953. 24 p.

U.S. Federal Security Agency. Division of State Merit System Services. Directory. Washington. 1950.

U.S. Interagency Working Committee on Incentives, Awards, and Rewards. A proposed government incentives, awards, and rewards program with respect to government employees. Washington, Office of the Chairman, Government Patents Board. 1952. 27 p.

U.S. President's Committee on Civil Service Improvement. Report. Washington, Gov't Print. Off. 1941. 128 p.

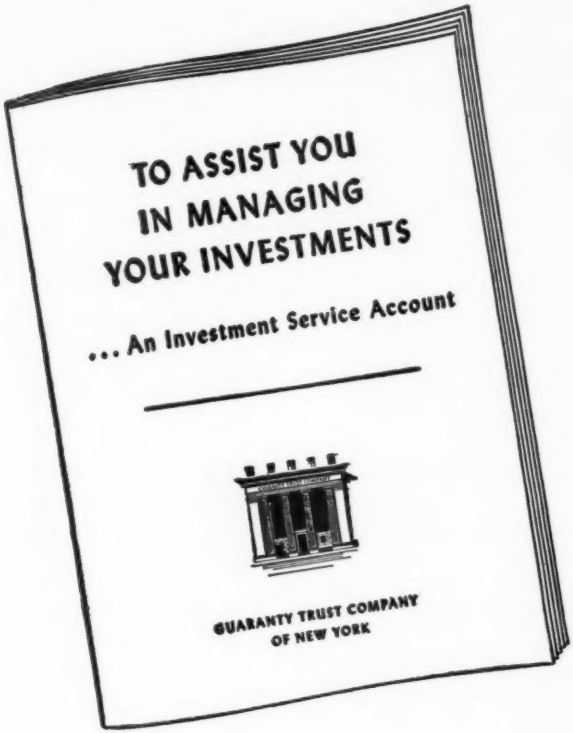
U.S. President's Temporary Commission on Employee Loyalty. Report. Washington, Gov't. Print. Off. 1947.

Weissberg, Morris. Civil service rights: New York City and State. New York, Able Pub. Co. 1950. 170 p.

White, Leonard Dupee. Government career service. Chicago, Univ. of Chicago Press. 1935. 99 p.

White, Leonard Dupee. Politics and public service. New York & London, Harper & Bros. 1939. 361 p.

Writ of prohibition and injunction as proper methods of review of orders of Civil Service Commission. 1950. 38 Ill. B. J. 367–70.



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